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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-6219

THOMAS BALDASAR, Petitioner

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent

(ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
SECOND JUDICIAL DISTRICT)

Petr's Supplemental Brief

SUPPLEMENTAL AND REPLY BRIEF FOR PETITIONER

ORIGINAL COPY

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This Court in an order dated May 30, 1978, accepted certiorari in a case presenting the question of whether the Sixth and Fourteenth Amendments to the United States Constitution guarantee the right to counsel when a defendant is charged with an offense punishable under State law by imprisonment, regardless of whether the defendant is in fact imprisoned. Scott v. Illinois, (No. 77-1177, May 30, 1978). If this Court resolves the question in favor of the accused, the State's argument here that it is not unconstitutional to try a person for a misdemeanor without an attorney or a valid waiver of counsel is totally undercut. Should the Court so decide, then petitioner's underlying counselless misdemeanor conviction, obtained by a guilty plea would be invalid and could not, under the precedent of Burgett v. Texas, 398 U.S.109, 88 S.Ct.258, 19 L.Ed.2d 319 (1967), be used to enhance his sentence.

Even in the event that Scott is decided unfavorably to the petitioner, this case presents the closely related question of whether uncounseled misdemeanor convictions which did not result in imprisonment can later be used to enhance a sentence. The liberty interest here is of course much greater than in Scott, where only a $50 fine was imposed, for as the dissenting Appellate Judge noted, "Here, the direct consequence of the uncounseled misdemeanor conviction was an extra two years added to the defendant's maximum sentence." People v. Baldasar, 52 Ill.App.3d 305, 367 N.E.2d 459, 466 (Rechenmacher, P.J., dissenting).

The State agrees that felony convictions obtained without counsel are unreliable, but argues that this does not apply equally to misdemeanor convictions which do not result in imprisonment. The argument is not persuasive because it never faces the point that uncounseled misdemeanor convictions used later to enhance a penalty are unreliable for the very same reasons that counselless felony convictions have been held to be unreliable by this Court. Neither type of conviction can be relied upon to enhance a sentence since defending against misdemeanor convictions presents similar problems to those involved in felony prosecutions which are beyond the competence of the accused. Potts v. Estelle, 529 F.2d 450, 454 (5th Cir. 1976). The fact that a sentence was not imposed in the petitioner's prior misdemeanor conviction adds nothing to the reliability of that conviction and the State should not be allowed to assert that fact as a distinguishing characteristic.

The State's final claim is that the "run of misdemeanors" would be affected if uncounseled convictions were not allowed to be used for enhancement purposes. The majority of the jurisdictions cited in the petition for certiorari belie this argument, since accepting the argument petitioner makes here has not drastically altered those states' enhancement provisions. The State may still enhance a conviction; however, to do so the State must first show that a defendant was represented by counsel or intelligently waived the same,

before the prior conviction may be the basis for a subsequent higher offense.

For the compelling reasons stated in our Petition and in this Supplemental Brief and Reply we respectfully request that this Honorable Court grant certiorari.

Respectfully submitted,

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